

DoD Restoration Advisory Board (RAB) Implementation Guidelines (27 September 1994)

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THE DEPARTMENT OF DEFENSE
AND
THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY



WASHINGTON, DC

SEP 27 1994

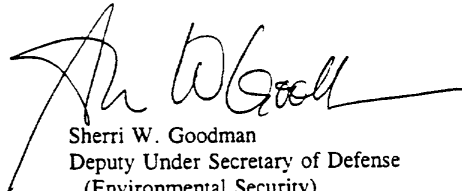
SUBJECT: Restoration Advisory Board (RAB) Implementation Guidelines

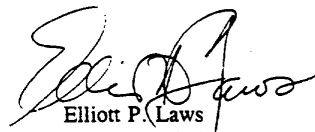
The Department of Defense (DoD) is taking steps to increase public participation in its cleanup program. New DoD policy, which resulted from DoD's participation in the Federal Facilities Environmental Restoration Dialogue Committee, calls for Restoration Advisory Boards (RABs) to be formed at all closing installations and at non-closing installations where the local community expresses interest.

RABs are an expansion of DoD's Technical Review Committee (TRC) concept. The boards are a forum for exchange of information and partnership among citizens, the installation, EPA, and State. Most importantly, they offer an opportunity for communities to provide input to the cleanup process. It is our view that RABs will improve DoD's cleanup program by increasing community understanding and support for cleanup efforts, improving the soundness of government decisions, and ensuring cleanups are responsive to community needs.

The attached document entitled "Restoration Advisory Board Implementation Guidelines" provides recommended procedures for establishing and operating RABs. It is intended to be a resource for installation, EPA, and State personnel and citizens who participate in RABs. The guidelines were developed by a joint DoD/EPA working group which is a model for interagency cooperation.

The agency points of contact on RABs are, for DoD, Ms. Marcia Read, 703-697-9793; for EPA, Ms. Marilyn Null 202-260-5686.


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Attachment

Restoration Advisory Board (RAB) Implementation Guidelines



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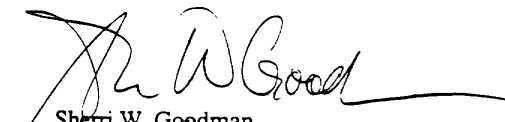
MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS, LOGISTICS & ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS & ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS &
ENVIRONMENT)
DIRECTOR, DEFENSE LOGISTICS AGENCY (D)
DIRECTOR, DEFENSE NUCLEAR AGENCY

SUBJECT: Restoration Advisory Board (RAB) Implementation Guidelines

RAB Implementation Guidelines are forwarded to assist in carrying out DoD's new policy to increase community involvement in the cleanup program. The guidelines were developed by a joint DoD/EPA Working Group and reflect feedback received from participants at the seven RAB training workshops held across the country last summer.

Installations which have cleanup programs should, at a minimum, be conducting outreach to nearby communities to determine whether there is interest in forming a RAB. If sufficient interest is demonstrated, the installation should initiate RAB formation in coordination with EPA, the State and the community. Where appropriate, existing Technical Review Committees should be converted to RABs. I intend to measure progress made in establishing RABs through the quarterly In-Progress Review process. This process is in place for measuring progress of cleanup activities at active and closing installations.

I ask your support in ensuring that RABs are established consistent with policy. I understand that RABs will require considerable effort to set up and maintain. However, it is my belief that RABs will improve the cleanup program by increasing community understanding and support for our efforts, improving the soundness of government decisions, and ensuring cleanups are responsive to community needs.


Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

Attachment

Environmental Security



Defending Our Future



**DEPARTMENT OF DEFENSE
AND
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**



**Restoration Advisory Board
Implementation Guidelines**

September 1994

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These guidelines are based on the "Interim Guidance for Implementing Restoration Advisory Boards," November 1993, drafted by California Environmental Protection Agency, Department of Toxic Substances Control.

**U.S. ENVIRONMENTAL PROTECTION AGENCY
AND DEPARTMENT OF DEFENSE
RESTORATION ADVISORY BOARD IMPLEMENTATION GUIDELINES**

I. BACKGROUND

The United States Environmental Protection Agency (EPA) and the Department of Defense (DoD) recognize the importance of public involvement at military installations that require environmental restoration. Therefore, EPA and DoD have developed joint Restoration Advisory Board (RAB) guidelines. DoD policies on community involvement can be found in the *“Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program,”* April 14, 1994.

RABs bring together people who reflect the diverse interests within the local community, enabling the early and continued flow of information between the affected community, DoD and environmental oversight agencies. DOD is creating RABs to ensure that all stakeholders have a voice and can actively participate in a timely and thorough manner in the review of restoration documents. RAB community members will provide advice as individuals to the decision-makers on restoration issues. It is a forum to be used for the expression and careful consideration of diverse points of view. The RAB complements other community involvement efforts, but does not replace them. The DoD installation will continue to be responsible for fulfilling all statutorily mandated public involvement requirements.

This document provides guidelines to assist DoD installations on how to develop and implement a RAB and the role of environmental oversight agencies in this process. It is intended to be flexible so the DoD installation can adapt the RAB to meet the individual needs of the community.

The guidelines are based on recommendations contained in the February 1993, “Interim Report of the Federal Facilities Environmental Restoration Dialogue Committee.” While not identical, they are generally consistent with the Committee’s recommendations.

Although these guidelines are intended to apply at all military installations, EPA’s involvement on a RAB will vary based on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) National Priorities List (NPL) status of the installation. EPA is committed to full involvement on RABs as the Federal regulatory agency for all DoD installations on the NPL or at base closure sites where EPA has received resources from DoD. EPA’s involvement will be at the discretion of EPA’s regional office for non-NPL, non-base closure or base closure installations where EPA has not been given resources from DoD.

For this document, the term “stakeholder” is defined as parties that are actually or potentially affected by restoration activities at an installation.

II. RAB DEVELOPMENT

Most DoD installations have already established Technical Review Committees (TRCs) to provide interested parties with a forum to discuss and provide input into site restoration activities as required by 10 USC 2705(c) and Executive Order 12580, “Superfund Implementation.” The DoD RAB policy calls for existing TRCs or similar groups to be expanded or modified to become RABs rather than create a separate committee, as long as the RABs meet the statutory requirements for TRCs. RABs provide an expanded opportunity for ongoing community input and participation in all phases of installation restoration activities and decision-making.

The RAB is not a replacement for other types of community outreach and participation activities required by law, regulation, or policy. Therefore, all existing public involvement requirements must still be completed, including the community relations requirements of CERCLA as amended by the Superfund Amendments and Reauthorization

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Act (SARA); and public involvement requirements of the Resource Conservation and Recovery Act (RCRA), National Environmental Policy Act (NEPA), and any state environmental regulations.

Although the DoD installation has the lead responsibility for the formulation and implementation of the RABs, the state and EPA, as appropriate, should be involved in all phases of RAB planning and operation.

Preparing for the Initial RAB Information Meeting

Before the initial RAB information meeting, the DoD installation should begin the process of informing and educating the community about the purpose of the RAB and opportunities for membership and participation. This is especially important at installations where a TRC has not been formed or where the community has had limited participation in the TRC. This can be accomplished by completing the following suggested activities.

Fact Sheet

The DoD installation should prepare and distribute a brief, one-page fact sheet describing the RAB prior to the initial RAB information meeting. This should be done in consultation with the existing TRC, the state, and EPA, as appropriate. It may be advisable to distribute the fact sheet using any existing public participation mailing lists unless a wider distribution is deemed desirable. The fact sheet should describe the purpose of the RAB, membership opportunities, the membership selection process, and state the responsibilities of RAB members. Copies of the fact sheet should be made available to the public in information repositories established by the installation and widely accessible to the community. If a significant segment of the community is non-English speaking or visually impaired, the fact sheet should be translated. A sample RAB fact sheet is included as Enclosure 1.

Public Notice

A paid public notice should be issued to advertise the initial RAB information meeting in at least one newspaper of general circulation serving the affected communities around the installation, as well as in the installation newspaper. The public notice should be published in advance of the meeting and include the following information:

- time and location of the meeting
- notice of the intent to establish a RAB or transition the TRC to become a RAB, if applicable
- RAB purpose
- membership opportunities
- meeting is open for public attendance and participation
- name and phone number of contact person(s) for more information
- topics for consideration at the initial RAB information meeting

The public notice should be placed in a prominent section of the newspaper likely to be read by the majority of community members. A sample public notice is included as Enclosure 2.

Agenda

An agenda for the meeting should be developed by the DoD installation in consultation with the state and EPA, as appropriate. The agenda should reflect community restoration concerns as identified by existing community involvement activities (i.e., interview with key community leaders, review of correspondence, review of media coverage, etc.).

Press Release

The DoD installation's public affairs office should prepare and distribute a press release to explain the purpose of the RAB and the time and location of the meeting. Depending on local media coverage of installation

environmental issues, it may be appropriate to prepare a more extensive media packet of information to update the local media regarding installation restoration issues and activities.

Initial RAB Information Meeting

The initial RAB information meeting should be sponsored by the DoD installation as soon as possible to ensure the expeditious execution of the RAB. This can be accomplished at the next regularly scheduled TRC meeting, as long as sufficient public notice is given, or at a community meeting held specifically for this purpose. Where a TRC currently exists, the TRC must evaluate its member composition and operation using the RAB criteria and modify, as appropriate. The DoD installation should consult with the state and the EPA, as appropriate, well in advance of the initial RAB information meeting on all matters related to the meeting.

The initial RAB information meeting may be facilitated by the DoD installation. If appropriate, the meeting could be facilitated by a professional facilitator with meeting facilitation skills and experience. A professional facilitator should be considered where a controversial situation is anticipated and a sense of independence will avoid, minimize, or even diffuse acrimonious deliberations.

The focus of the meeting should be to introduce the RAB concept to the community and begin the membership solicitation process. Some of the suggested topics to address include:

- overview and purpose of the RAB
- goal of representing diverse community interests
- difference between the RAB and the TRC
- membership opportunities
- member selection process and time table
- member responsibilities and what is expected of members
- overview of installation restoration and/or conversion activities and plans (as appropriate)
- open discussion/question and answer period
- co-chair opportunities
- potential conflict of interest concerns

The date and location of the meeting should be chosen with the goal of making it convenient for a majority of community members to attend and participate. The meeting, as with all RAB meetings, should be held in a central location. Input from the community should be strongly considered regarding convenient meeting locations and times. The DoD, the state, and EPA should ensure that a representative and/or designee is in attendance at all RAB meetings.

The DoD installation should prepare meeting minutes summarizing the topics discussed at the meeting. The minutes should be a concise summary of the meeting rather than verbatim transcripts. Translation of meeting minutes should be provided if a large segment of the local community speaks a language other than English or members of the community are visually impaired. The minutes should be made available to the public at the information repositories and/or other places within two weeks of the meeting. The DoD installation may want to consider mailing copies of the minutes to all community members who attended the meeting, existing TRC members and/or to people identified on the installation's community relations mailing list.

Converting a TRC to a RAB

If an installation already has a functioning TRC, it should be converted into a RAB instead of establishing a separate committee. Some of the tasks that need to be done to accomplish the conversion are: adding a community co-chair; increasing community representation; and making all meetings open to the public. The ultimate goal of the RAB is to improve communications among stakeholders and solicit input to be used in the decision process.

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As a part of the initial member selection process, the DoD installation, with input from the EPA, as appropriate, and the state, should evaluate diversity of the current membership of the TRC. DoD membership should consist of 1 to 2 members. As a general rule, TRC members should be given preference for a seat on the RAB to preserve continuity and the “institutional history” of the restoration process. This should be balanced against the preeminent need to form a RAB truly representative of the community’s diverse interests.

Formulating the RAB

Ensuring Membership Diversity and Balance

RAB members should be identified by a selection panel, see “Selecting Community Members.” The RAB should be comprised of members from the local community and representatives from DoD, the state, and EPA, as appropriate. Community members selected for RAB membership should reflect the diverse interests within the local community. RAB members should live/work in the affected community or be impacted by the restoration program. The following list of potential interests should be considered for representation on the RAB. This list is illustrative and not all inclusive. Each RAB should be developed to reflect the unique mix of interests and concerns within the local community.

- local residents/community members (including minorities and low income)
- local reuse committees
- Technical Assistance Grant (TAG) recipient
- current TRC members
- local government officials/agencies
- business community
- school districts
- installation employees/residents
- local environmental groups/activists
- civic/public interest organizations
- religious community
- other regulatory agencies
- local homeowners organizations
- medical community
- Native American tribes

DoD, the state, and EPA, as appropriate, will generally have one member each on the RAB. While it is anticipated that other members of the installation and regulatory agencies will regularly attend and participate in RAB meetings as resources, the majority of RAB members should be from the local community.

Soliciting Community Members

For an effective RAB to be established quickly, the DoD installation, in coordination with the EPA, as appropriate, and the state, needs to inform and educate the local community about the formulation of the RAB, its purpose, and the opportunities for membership. The public outreach effort should be tailored to the individual community at each installation and may include letters to local government officials and community members. This is especially important at installations where there has been limited community involvement opportunities or where there has been minimal community and media interest in the installation.

Every effort should be made to ensure that all individuals or groups representing the community’s interests are informed about the RAB and given the opportunity for RAB participation. Based on the results of member recruitment efforts, it may be necessary to directly solicit some groups or organizations. A sample RAB member recruiting letter is included as Enclosure 3 and may be useful in such efforts. For ease in tracking community interest, a community interest form, Enclosure 4, can be developed and distributed at the initial meeting, made available at local information repositories or other suitable locations, and mailed to persons who write or call.

Determining the Size of RAB

The initial size of the RAB will be determined by the RAB selection panel. Once the RAB is operational, procedures should be developed to address the addition and removal of RAB members. The RAB may want to re-evaluate the current RAB size, diversity and balance, and add members. To facilitate constructive dialogue, the RAB should generally be no larger than 20 individuals but no smaller than is necessary to adequately reflect the diversity of community interests regarding installation restoration. If RAB membership significantly exceeds 20, efforts should be made to consolidate and eliminate any duplicate representation of similar view points. If the RAB is larger than 20, the use of sub-committees should be considered.

Selecting RAB Members

The transition period between the meeting to initiate RAB formulation and the implementation of a fully functioning RAB will likely be a busy, challenging period. Although the length of time required to complete the transition to a RAB will vary from installation to installation, most RABs should set a goal to be in full operation within six months from the meeting to initiate RAB formulation. During this period of time the following key activities should be completed to ensure successful development and implementation of the RAB.

Selecting Community Members:

Selection Panel. The installation Commanding Officer (CO) in consultation with the state and EPA, as appropriate, should identify community interests and solicit names of individuals who can represent these interests on the selection panel. Once the selection panel nominees have been provided, the CO in consultation with the state and EPA, as appropriate, should review the selection panel nominations to ensure balance and diversity. If nominations represent the diversity of the community, they will become the selection panel. The panel should establish and announce the following items:

- procedures for nominating community RAB members
- process for reviewing community interest forms
- criteria for selecting community RAB members
- list of RAB nominees

Final Selection: RAB membership selection should be in an open and fair manner using the panel. The panel will evaluate interest forms and develop a nomination list for the CO. The CO, in consultation with the state and EPA, as appropriate, should review the list to ensure that nominees represent the diversity of the community. If the list lacks diversity, the CO will ask the selection panel to provide a revised list. A lack of diversity or balance is the only reason a list can be rejected.

The selection panel may want to contact those who expressed interest but not selected for RAB membership to thank them for their interest and willingness to participate in the RAB. A letter to them should explain selection criteria, why they were not chosen and should encourage them to attend and participate at the RAB meetings as members of the general public. Their interest forms should be kept on file for consideration when future membership openings occur.

Additions to and removals from the RAB can be made at any time the RAB deems necessary. Procedures for additions and resignations should be outlined in the operating procedures.

NOTE: DOD contractor personnel should not be RAB members. However, for community RAB members who have business interests, membership on the RAB should not limit ability to compete for contracts. All information provided the RAB members should also be made available to the general public. Appropriate assurances should be made to avoid conflicts of interest.

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Selecting Government Members:

The DoD installation, state and local governments, and EPA, as appropriate, should be represented on the RAB. Members may include the Remedial Project Manager (RPM) from the service, state, and EPA, as appropriate, and representatives from local agencies. Representatives should dedicate the time necessary and have sufficient authority to fulfill RAB responsibilities. Whenever, possible, each entity should be represented by one individual. Other government officials such as public health officials from the Agency for Toxic Substances and Disease Registry (ATSDR) may attend RAB meetings as their expertise may be needed.

In the case of closing military installations, the Base Realignment and Closure (BRAC) Cleanup Team (BCT) will be a member of the RAB. The BCT consists of representatives from the DoD service, EPA, and the state.

III. RAB OPERATIONS

This section presents some important issues related to RAB operations. Once the RAB is officially formed, the RAB should develop and implement its operating procedures.

Selecting Co-Chairs

Co-chairs' responsibilities should be jointly held between the installation and community and they will serve as equal partners. Selection of the DoD installation co-chair is by the installation's CO. The community co-chair should be selected by the community members of the RAB. The co-chairs should have sufficient authority and ability to fully undertake RAB chairperson responsibilities.

The length of the term to be served by the co-chairs should be decided upon by the RAB and outlined in the RAB's operating procedures, one- or two-year terms should be considered. This will allow for continuity, but also timely change if necessary. Co-chair termination procedures should be articulated in the RAB's operating procedures.

Distributing a Fact Sheet

After the RAB is established, the RAB should consider preparing and distributing another brief fact sheet to announce that the RAB has been formed and publish the names of RAB members. The fact sheet could also announce the RAB meeting schedule, publicly thank all community members who expressed interest in RAB participation, and encourage ongoing community attendance and participation at future RAB meetings.

Developing a RAB Mission Statement

Each RAB should develop a mission statement that articulates the overall purpose of the RAB. The statement can be brief. For example, "The RAB mission should be to establish and maintain a forum with all stakeholders for the exchange of information in an open and interactive dialogue concerning the installation's restoration program."

Developing RAB Operating Procedures

The RAB should develop a set of operating procedures. The operating procedures should include policies on attendance, meeting frequency, procedures for removing, replacing co-chairs and replacing/adding other members, membership and co-chair length of service, methods for resolving member disputes, process for reviewing and responding to public comments, and procedures for public participation.

Training for RAB Community Members

Once selected, RAB members may need some initial orientation to enable them to perform their duties. The DoD installation should work with the state, EPA and environmental groups to develop methods to quickly inform and educate the RAB members to promote the rapid formation of a fully functioning RAB. This may be accomplished at initial RAB meetings or at special orientation sessions and may include the following:

- formal training sessions
- workshops
- informal briefings
- briefing booklets, past fact sheets, maps
- site tours

Technical support staff from state, federal, and local agencies that have involvement with restoration and reuse issues may be asked to attend RAB meetings to provide information in their areas of expertise and will be available to provide information and explanation to RAB members.

Providing Administrative Support to the RAB

The DoD installation needs to ensure that adequate administrative support is made available to establish and operate the RAB. It is especially important to provide for ongoing administrative support for closing or closed installations. Administrative support will usually include the following:

- meeting facilities
- preparation of meeting minutes and other routine word processing tasks
- copying/printing of RAB documents, notices, fact sheets
- conduct mailings
- distribution of public notices in local newspapers
- management of RAB mailing lists
- translation and distribution of outreach and other RAB materials
- meeting facilitation

Funding for RABs

Administrative and logistical support to meet the RAB's mission should be provided by the DOD installation, using the Defense Environmental Restoration Account at non-BRAC installations, and BRAC funds at closing installations.

Technical Assistance

Community members of the RAB at NPL installations may establish an organization and apply for a Technical Assistance Grant from EPA, provided that a TAG has not already been awarded to another community group at the installation.

Scheduling Meetings

RAB meetings should be scheduled on a regular basis. The individual RAB members should decide the scheduling and frequency of RAB meetings. The frequency of RAB meetings should be to ensure timely and effective communication. Closing installations may require more frequent meetings.

Location

The RAB meetings should be held in a location agreed upon by the RAB members and in a location that is accessible to the physically impaired. The development of the RAB concept was meant to ensure and enhance

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community involvement in the process; providing the community with the opportunity to suggest meeting locations should assure this.

Special Focus Meetings

When necessary, the RAB may meet for special focus meetings. These are meetings where a single topic or specific document may be reviewed, discussed, and commented on. This may occur when the RAB determines the need for input on specific issues in order to move ahead or the co-chairs agree that a special meeting is necessary.

Attending Meetings

Ongoing and consistent involvement of all board members is essential to the success of the RAB. Regular attendance by all members or designated alternates is expected. Early in the process, the group should jointly establish groundrules for participation, including meeting attendance. Representatives from the DoD, environmental regulatory agencies, and the community should attend all RAB meetings. This will aid in the operation of the RAB as a team.

If after selection, a RAB member is unable to fully participate, the RAB, using pre-established rules, should ask the member to submit his/her resignation in writing to either of the RAB co-chairpersons. Procedures for replacing/adding members should be decided by the RAB.

Conducting the Meeting

Each meeting should have a purpose and an agenda. Because these meetings are open to the public, a translator should be provided where a large portion of the community is non-English speaking or hearing impaired. If the RAB deems that an outside facilitator is necessary, arrangements should be made accordingly.

Nature of Discussions

DOD will consider all advice provided by the RAB whether consensus in nature or provided on an individual basis, including advice given that represents the minority view of members. However, because DOD does not intend for Federal Advisory Committee Act (FACA) requirements to apply to RABs, consensus is not a prerequisite for RAB recommendations. Each individual should provide advice as an individual, not as a group. At the same time, while consensus is not required or asked of the board members, in the natural course of discussions consensus may evolve.

Format

The meeting format of the RAB will vary. The format will be dictated by the needs of the RAB. Generally, a basic format should include:

- review of “old” business
- presentation or update by project technical staff and RAB member discussions
- question/answer/input/discussion period for non-RAB community participants
- list of action items for the RAB members
- discussion of the next meeting’s agenda

Meeting Minutes

The RAB should prepare meeting minutes summarizing the topics discussed at RAB meetings. The minutes should be concise summaries of RAB meetings rather than verbatim transcripts to facilitate effective communication with the local communities. Before copies of the meeting minutes are distributed to existing members of the RAB and made available for public review, the co-chairs should review and approve them. These minutes should be made

available to the public within two weeks of the meeting. A public notice should be prepared to announce the availability of the meeting minutes and the next meeting. The DoD installation may want to consider mailing copies of the minutes to all community members who attend the RAB meetings and to those on the community relations mailing list.

The meeting minutes should be translated if a large segment of the local community speaks a language other than English or members of the community are visually impaired. The DoD installation is responsible for distributing copies of the meeting minutes and all documents to the RAB for review and comment and that this same information is consistently available for public review in the information repositories.

Responding to Comments

The RAB should regularly review, discuss, and provide comments on a wide variety of technical documents and plans. This information should simultaneously be made available for public review and comments at the local information repositories. Public comments should be seriously considered before these documents or plans are finalized.

Public Comment Periods Required by Regulation

The DoD installation should solicit and respond to comments from the public as specified in applicable regulations. In some cases, e.g. RCRA, the regulatory agency is required to obtain public input on corrective actions. Accordingly, it may not be necessary for the DOD installation to seek public comment.

The public is the community at large, not only the RAB.

Other Comments

As a general rule, all draft and final documents deliverable to regulators should be distributed to the RAB and the public for review and comment when they are given to the regulators and should be made available for at least 30 days for review. For documents where a review period shorter than 30 days applies to regulatory staff, this same shorter review period would also apply to the review by the RAB and community members. Every effort should be made to provide the RAB and community members with an adequate review period based on the length and complexity of the document. Where necessary, special focus meetings of the RAB may be called to review and comment on key documents.

To demonstrate commitment to meaningful consideration of comments, the DoD installation should prepare formal written responses to all substantive comments received from the RAB and the general public. In some cases, RAB meeting minutes may suffice to document responses to specific comments.

Addressing Non-restoration Issues

Because RABs provides a direct channel for communication to the installation, community members may raise some non-restoration issues during RAB discussions. Although these issues may not be appropriate for discussion within the context of the RAB, DOD should be responsive to these concerns by referring them to the appropriate offices at the installation or to alternative forums more appropriate for the issue (i.e., at closing installations, non-restoration issues should be referred to the local Reuse Committee, the Base Transition Coordinator, or the BRAC Cleanup Team).

IV. ROLES AND RESPONSIBILITIES

Department of Defense Installation Co-Chair

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1. The DoD installation co-chair should coordinate with the community co-chair to prepare and distribute an agenda prior to each RAB meeting. If the RAB will address restoration related to base closure activities, the DoD and community co-chair should coordinate with the BRAC Cleanup Team, the Base Transition Coordinator, and the reuse committee.
2. The DoD installation co-chair should ensure that DoD participates in an open and constructive manner.
3. The DoD installation co-chair should attend all meetings and ensure that the RAB has the opportunity to participate in the restoration decision process.
4. The DoD installation co-chair should ensure that community issues and concerns related to restoration are addressed when raised.
5. The DoD installation co-chair should ensure documents distributed to the RAB are also made available to the general public.
6. The DoD installation co-chair with assistance from the RAB should ensure that an accurate list of interested/affected parties is developed and maintained.
7. The DoD installation co-chair should provide relevant policies and guidance documents to the RAB in order to enhance the RAB's operation.
8. The DoD installation co-chair should ensure that adequate administrative support to the RAB is provided.
9. The DoD installation co-chair should refer issues not related to restoration to appropriate installation official for them to address.
10. The DoD installation co-chair should report back to the installation.

Community Co-Chair

1. The community co-chair should coordinate with the DoD installation co-chair and RAB community members to prepare an agenda prior to each RAB meeting.
2. The community co-chair should ensure that community members participate in an open and constructive manner.
3. The community co-chair should ensure that community issues and concerns related to restoration are raised.
4. The community co-chair should assist with the dissemination of information to the general public.
5. The community co-chair should report back to the community.
6. The community co-chair is expected to serve without compensation.

RAB Community Members

1. The RAB community members are expected to attend meetings.
2. The RAB community members are expected to provide advice and comment on restoration issues to the decision makers.

3. The RAB community members should represent and communicate community interests and concerns to the RAB.
4. The RAB community members should act as a conduit for the exchange of information between the community, DoD installation, and environmental oversight agencies regarding the installation's restoration and reuse programs.
5. The RAB community members should review, evaluate, and comment on documents and other such materials related to installation restoration and closure, where applicable.
6. The RAB community members are expected to serve without compensation on the RAB.

State Regulatory Agency Member

1. The state member should attend RAB meetings.
2. The state member should serve as an information, referral and resource bank for communities, installations and agencies regarding installation restoration.
3. The state member should review documents and other materials related to restoration.
4. The state member should ensure that state environmental standards and regulations are identified and addressed by the DoD installation.
5. The state member should facilitate flexible and innovative resolutions of environmental issues and concerns.
6. The state member should assist in education and training for the RAB members.

U.S. Environmental Protection Agency (EPA) Member

1. The EPA member should attend RAB meetings.
2. The EPA member should serve as an information, referral and resource bank for communities, installations and agencies regarding installation restoration.
3. The EPA member should facilitate flexible and innovative resolutions of environmental issues and concerns.
4. The EPA member should ensure that federal environmental standards and regulations are identified and addressed by the DoD installation.
5. The EPA member should assist in education and training for the RAB members.

BRAC Cleanup Team (BCT) at Closing Installations

1. The BCT should maintain a close working relationship with other members of the RAB.
2. The BCT should provide timely and accurate information to the RAB.

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ENCLOSURES

Restoration Advisory Board (RAB) Implementation Guidelines

Enclosure (1) Sample RAB Fact Sheet

RESTORATION ADVISORY BOARD (RAB)

(name and location of installation)

(add site-specific logo if available)

Background

At *(name of installation)* the *(name of service)* will be pursuing installation restoration activities as part of the Department of Defense's Installation Restoration Program (IRP). *(Provide a brief description of the restoration activities projected at the installation.)*

What is a RAB?

The RAB is an advisory body designed to act as a focal point for the exchange of information between *(name of installation)* and the local community regarding restoration activities. The RAB is intended to bring together community members who reflect the diverse interests within the local community, enabling the early and continued two-way flow of information, concerns, values, and needs between the affected community and the installation.

RAB members will be asked to meet regularly and review and comment on technical documents and plans relating to the ongoing environmental studies and restoration activities at *(name of installation)*. Members will be expected to serve as a liaison with the community and be available to meet with community members and groups. Membership terms will be decided by the RAB. All RAB meetings will be open to the public. Technical support staff will be available to provide informational support and explanation to RAB members.

How to Become a RAB Member

Community members interested in finding out more about the RAB are invited and encouraged to attend a community meeting that *(name of installation)* will conduct on *(date and time)*. At the meeting, you will learn about the purpose of the RAB, membership opportunities and responsibilities, and hear an update on the status of installation restoration activities and future plans. RAB membership applications will be available at the community meeting. The community meeting will be held at the following address:

(List location, address, date, and time of meeting)

If you have questions about the RAB or are interested in applying for RAB membership, community interest forms may also be obtained by contacting:

(List name, title, address, and telephone number of contact)

All Community Interest Forms must be received by *(deadline for forms)*. Forms will be reviewed and approved by the selection panel. The selection panel is organized by the Commanding Officer of *(name of installation)*. The selection panel members are representatives from the DoD installation, state, community and EPA, as appropriate.

Enclosure (1) Sample RAB Fact Sheet (continued)

Community Expectations

Community members are expected to serve as volunteers on RABs to provide advice to the decision makers about restoration plans for the *(name of installation)*.

Enclosure (2) Sample RAB Public Notice

PUBLIC NOTICE
(name of installation)
Formation of Restoration Advisory Board
Membership Solicitation

The Department of Defense recognizes the importance of stakeholder participation for Installation Restoration Programs (IRP). Therefore, *(name of installation)* is announcing the establishment of a Restoration Advisory Board (RAB). The RAB is intended to improve public participation by involving the community in the restoration decision-making process.

The existing Technical Review Committee (TRC) will be modified to become a RAB. The RAB will include community members who reflect the diverse interests of the local community. RAB members will be asked to review and comment on plans and activities relating to the ongoing environmental studies and restoration activities at *(name of installation)*. RAB members will have the opportunity to provide input on activities that will accelerate the restoration. Members will also be expected to serve as a voluntary liaison between the community and the RAB and be available to meet with community members and/or groups. RAB meetings will be open to the public.

Community interest forms can be obtained by contacting:

(List name, title, address, and telephone number of contact[s])

Members will be expected to serve a one- to two-year term and attend RAB meetings regularly. Forms will be reviewed and approved by the selection panel. The selection panel members will be representatives from the *(name of installation)*, *(name of state environmental agency)*, the community, and the U.S. Environmental Protection Agency, as appropriate. To qualify, interested parties must be local residents of *(name of cities or counties)* that are impacted/affected by *(name of installation)*.

The initial RAB information meeting will be held:

(list location, date, and time of meeting)

For additional information, please contact *(name, address, and telephone number of contact)*.

Restoration Advisory Board (RAB) Implementation Guidelines

Enclosure (3) Sample RAB Recruiting Letter (Issued by Selection Panel)

RESTORATION ADVISORY BOARD FORMATION

Dear *(name of community member)*:

The Department of Defense recognizes the importance of stakeholder participation in our Installation Restoration Programs (IRP). Therefore, *(name of installation)* is announcing the establishment of a Restoration Advisory Board (RAB). The RAB is intended to improve public participation by involving the community in the restoration decision-making process.

The RAB will include community volunteer members who reflect the diverse interests of the local community. RAB members will have an opportunity to provide input on installation restoration activities. RAB community members can expect to spend *(number of hours/days)* per year supporting the RAB.

RAB members will be asked to meet regularly and review and comment on plans and activities relating to the ongoing environmental studies and restoration activities at *(name of installation)*. RAB members will be expected to serve as a liaison with the community and be available to meet with community members and groups. Members will be expected to serve a term. All RAB meetings will be open to the public.

If you are interested in participating on the RAB for *(name of installation)*, please complete the enclosed Community Interest Form and return it to the following address not later than *(deadline for applications)*:

(List name, address, and telephone number of contact)

Forms will be reviewed by a panel comprised of representatives from the community. The panel will nominate a list of community members for the RAB to the *(name of installation)* and appropriate regulatory agencies.

Sincerely,

(name of selection panel member)

Enclosure

Enclosure (4) Sample RAB Community Interest Form

**COMMUNITY INTEREST FORM FOR
(NAME OF INSTALLATION) RESTORATION ADVISORY BOARD**

Conditions for Membership:

Restoration Advisory Board (RAB) members are volunteering to serve a term and attend all RAB meetings. Duties and responsibilities will include reviewing and commenting on plans and activities associated with the Installation Restoration Program at *(name of installation)*. Technical experts will be made available to the RAB. Members will be expected to be available to community members and groups to facilitate the exchange of information and/or concerns between the community and the RAB. RAB community members can expect to devote approximately *(number of hours/days)* per year to support the RAB.

Priority for RAB membership will be given to local residents that are impacted/affected by the *(name of installation)*.

Name: _____

Address: _____

Street Apt.# City State Zip

Phone: () _____ () _____ () _____
Daytime Home Fax

1. (OPTIONAL) Are you affiliated with any group related to restoration or base closure activities? If yes, list the group and your position, if applicable.
2. Briefly state why you would like to participate on the RAB.
3. What has been your experience working as a member of a diverse group with common goals?

Restoration Advisory Board (RAB) Implementation Guidelines

Enclosure 4: Sample RAB Community Interest Form (continued)

4. The community co-chairperson will be selected by community members of the RAB. Please indicate if you are interested in being considered for the community co-chairperson position on the RAB.

☐ Yes, I would like to be considered.

5. Are you willing to voluntarily serve on the RAB?

☐ Yes, I am willing to serve.

6. By submitting this form, you are aware of the time commitment which this appointment will require of you.

PRIVACY ACT STATEMENT: The personal information requested on this form is being collected in order to determine interest in and qualification for membership on the Restoration Advisory Board. The information will be reviewed by a selection panel and will be retained in a file at *(name of installation)*. The information will not be disseminated. Providing information on this form is voluntary.

DoD Policies on Asbestos, Lead-Based Paint, and Radon at Base Realignment and Closure Properties (31 October 1994)

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ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000



31 OCT 1994

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS, LOGISTICS & ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS & ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS &
ENVIRONMENT)
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Asbestos, Lead Paint and Radon Policies at BRAC Properties

The purpose of this memorandum is to request that you implement the attached Department of Defense (DoD) policies on asbestos, lead paint and radon at base realignment and closure (BRAC) properties.

As you may recall, these policies were drafted and accepted within the Defense Environmental Security Council (DESC) structure. During its May 6, 1994, meeting the DESC accepted the draft DoD policy on radon at BRAC properties. At that meeting, the draft policies on asbestos and lead paint were referred to the Environment, Safety and Occupational Health Policy Board (ESOHPB) for revision and acceptance. During its May 10, 1994, meeting the ESOHPB accepted the revised draft DoD policies on asbestos and lead paint at BRAC properties.

Subsequent to DESC and ESOHPB action, these policies were coordinated formally with the Assistant Secretary of Defense (Economic Security) and the Office of the Deputy General Counsel (Acquisition & Logistics). If there are any questions concerning this request, please contact Ed Dyckman, DESC Executive Secretary at 703-697-9107.

Gary D. Vest
Principal Assistant Deputy Under Secretary
of Defense (Environmental Security)

Attachments

Environmental Security



Defending Our Future

**DOD POLICY ON ASBESTOS
AT BASE REALIGNMENT AND CLOSURE PROPERTIES**

Department of Defense (DoD) policy with regard to asbestos-containing material (ACM) is to manage ACM in a manner protective of human health and the environment, and to comply with all applicable Federal, State, and local laws and regulations governing ACM hazards. Therefore, unless it is determined by competent authority that the ACM in the property does pose a threat to human health at the time of transfer, all property containing ACM will be conveyed, leased, or otherwise disposed of as is through the Base Realignment and Closure (BRAC) process.

Prior to property disposal, all available information on the existence, extent, and condition of ACM shall be incorporated into the Environmental Baseline Survey (EBS) report or other appropriate document to be provided to the transferee. The survey report or document shall include:

- reasonably available information on the type, location, and condition of asbestos in any building or improvement on the property;
- any results of testing for asbestos;
- a description of any asbestos control measures taken for the property;
- any available information on costs or time necessary to remove all or any portion of the remaining ACM; however, special studies or tests to obtain this material are not required; and
- results of a site-specific update of the asbestos inventory performed to revalidate the condition of ACM.

Asbestos-containing material shall be remedied prior to property disposal only if it is of a type and condition that is not in compliance with applicable laws, regulations, and standards, or if it poses a threat to human health at the time of transfer of the property. This remediation should be accomplished by the active Service organization, by the Service disposal agent, or by the transferee under a negotiated requirement of the contract for sale or lease. The remediation discussed above will not be required when the buildings are scheduled for demolition by the transferee; the transfer document prohibits occupation of the buildings prior to the demolition; and the transferee assumes responsibility for the management of any ACM in accordance with applicable laws.

DOD POLICY ON LEAD-BASED PAINT AT BASE REALIGNMENT AND CLOSURE PROPERTIES

Department of Defense (DoD) policy with regard to lead-based paint (LBP) is to manage LBP in a manner protective of human health and the environment, and to comply with all applicable Federal, State, and local laws and regulations governing LBP hazards. The Federal requirements for residential structures/dwellings with LBP on Base Realignment and Closure (BRAC) properties differ, depending on: (1) the date of property transfer; and (2) the date of construction of the residential housing being transferred.

DoD policy is to manage LBP at BRAC installations in accordance with either 24 CFR 35 or P.L. 102-550, at the Service's discretion, until January 1, 1995; and, thereafter, solely in accordance with P.L. 102-550. Residential structures/dwellings are as defined in the applicable regulation and any regulation issued pursuant thereto. The Military Components may apply this policy to any other structures they deem appropriate.

On January 1, 1995, and thereafter, the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of P.L. 102-550) concerning the transfer of Federal property for residential use take effect. These provisions, codified at (in pertinent part) 42 U.S.C. 4822, 4851-4856, and 15 U.S.C. 2688, are applicable to target housing, which is housing constructed prior to 1978, with limited exceptions for housing for the elderly or persons with disabilities or any 0-bedroom dwelling.

Target housing constructed after 1960 and before 1978 must be inspected for LBP and LBP hazards. The results of the inspection must be provided to prospective purchasers or transferees of BRAC property, identifying the presence of LBP and LBP hazards on a surface-by-surface basis. There is no Federal LBP hazard abatement requirement for such property. In addition, prospective transferees must be provided a lead hazard information pamphlet and the contract for sale or lease must include a lead warning statement.

Target housing constructed before 1960 must be inspected for LBP and LBP hazards, and such hazards must be abated. The results of the LBP inspection will be provided to prospective purchasers or transferees of BRAC property identifying the presence of LBP and LBP hazards on a surface-by-surface basis and a description of the abatement measures taken. In addition, prospective transferees must be provided with a lead hazard information pamphlet and the contract for transfer must include a lead warning statement.

The inspection and abatement discussed above will not be required when the building is scheduled for demolition by the transferee and the transfer document prohibits occupation of the building prior to the demolition; the building is scheduled for non-residential use; or, if the building is scheduled for residential use, the transferee conducts renovation consistent with the regulatory requirements for the abatement of LBP hazards.

Effective January 1, 1995, DoD BRAC properties shall be transferred in accordance with any regulations implementing the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act also made Federal agencies subject to all Federal, State, interstate, and local substantive and procedural requirements respecting LBP and LBP hazards (see 15 U.S.C. 2688). Therefore, there may be more stringent local requirements applicable to Federal property transfers.

**DOD POLICY ON RADON
AT BASE REALIGNMENT AND CLOSURE PROPERTIES**

In response to concerns with the potential health effects associated with radon exposure, and in accordance with the Indoor Radon Abatement provisions of Subchapter III of the Toxic Substances Control Act, 26 U.S.C. 2661 to 2671, the Department of Defense (DoD) conducted a study to determine radon levels in a representative sample of its buildings. In addition, as part of DoD's voluntary approach to reducing radon exposure, DoD has applied the Environmental Protection Agency (EPA) guidelines for residential structures with regard to remedial actions.

DoD policy is to ensure that any available and relevant radon assessment data pertaining to Base Realignment and Closure (BRAC) property being transferred shall be included in property transfer documents.

DoD policy is not to perform radon assessment and mitigation prior to transfer of BRAC property unless otherwise required by applicable law.

DoD Guidance on Implementation of Authority to Transfer Property Before Completing Remediation (24 September 1996)

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**OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000**

24 SEPTEMBER 1996

**MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS
AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND
ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER, RESERVE
AFFAIRS, INSTALLATIONS AND ENVIRONMENT)
DIRECTOR, DEFENSE LOGISTICS AGENCY**

SUBJECT: Implementation of Authority to Transfer Property before Completing Remediation

The Fiscal Year 1997 Defense Authorization Act contains a provision (section 334) that modifies section 120(h)(3) of the Comprehensive Environmental Response, Cleanup, and Liability Act to allow contaminated federal real estate to be transferred to private parties before remedial action has been taken. Although this authority provides an opportunity for the Department to assist communities in expediting reuse of closing military installations, it also presents certain challenges in properly structuring the arrangement.

We will be working closely with you and the U.S. Environmental Protection Agency to revise our Fast-Track Cleanup guidances to ensure effective implementation of this provision consistent with the protection of human health and the environment. We anticipate focusing on existing procedures, particularly the steps outlined in the Finding of Suitability for Transfer guidance.

We encourage you to explore the use of this new authority with Restoration Advisory Boards, Local Reuse Authorities, and others with whom you are working. Until we have implementing guidance, however use of this provision will be addressed on a case-by-case basis and only after consultation with this office. Please notify this office at your earliest convenience when you and another party begin negotiations that may involve the use of this authority.

We look forward to working closely with you to ensure that we use this new authority effectively and with appropriate safeguards regarding our long term liability. For further information, please contact Mr. John Stowers at (703) 697-9746.

{Original Signed}
Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

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**DoD Guidance on Clarification of
“Uncontaminated” Environmental
Condition of Property at Base
Realignment and Closure (BRAC)
Installations
(21 October 1996)**

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**OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000**

21 OCTOBER 1996

**MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS
AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND
ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER,
RESERVE AFFAIRS, INSTALLATIONS AND ENVIRONMENT)
DIRECTOR, DEFENSE LOGISTICS AGENCY (D)**

SUBJECT: Clarification of "Uncontaminated" Environmental Condition of Property at Base
Realignment and Closure (BRAC) Installations

Section 331 of the Fiscal Year 1997 National Defense Authorization Act clarified the meaning of "uncontaminated" by deleting the phrase "stored for one year or more" from Section 120(h)(4)(A) of the Comprehensive Environmental Response, Cleanup and Liability Act (CERCLA). Parcels of property on which hazardous substances or petroleum products may only have been stored for more than a year - but not released or disposed of - are now deemed to be "uncontaminated." This change places greater emphasis on whether there has been a release or disposal of a hazardous substance in real property transfers under CERCLA. Definitions for the seven categories of environmental condition of property used in the BRAC cleanup process have been revised to conform with the new meaning of "uncontaminated" and are attached. The BRAC Cleanup Plan (BCP) Guidebook has been revised to conform to the new meaning and is being distributed separately. The revised definitions apply to all BRAC rounds and should be particularly helpful for completing the Community Environmental Response Facilitation Act (CERFA) evaluations for the BRAC 1995 installations.

The CERCLA 120 (h)(4) covenant can be given only if regulatory agencies concur with the "uncontaminated" determination; otherwise the CERCLA 120(h)(3) covenant must be used. Under the revised CERFA guidance contained in the May 18, 1996 DoD policy for "Fast-Track Cleanup at Closing Installations," regulatory concurrence on "uncontaminated" determinations for parcels of property may be obtained after the statutory CERFA deadline if the Component believes such concurrence would facilitate the transfer and reuse of the property. With the new meaning of "uncontaminated," Components may, during the Finding of Suitability to Transfer (FOST) process, look at whether property from BRAC rounds prior to BRAC 95 meets the new definition and seek regulatory concurrence.

I appreciate the assistance of your staffs in revising the definitions for the environmental condition of property. My staff point of contact is Mr. Shah A. Choudhury, at (703) 697-7475

{Original Signed}
Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

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DoD Policy on Responsibility for Additional Environmental Cleanup After Transfer of Real Property (25 July 1997)

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ACQUISITION AND
TECHNOLOGY

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-3010

JUL 25 1997



MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS, LOGISTICS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS AND
ENVIRONMENT)
DEPUTY UNDER SECRETARY OF DEFENSE
(ENVIRONMENTAL SECURITY)
DEPUTY UNDER SECRETARY OF DEFENSE
(INDUSTRIAL AFFAIRS AND INSTALLATIONS)
DIRECTOR, DEFENSE LOGISTICS AGENCY (D)

SUBJECT: Responsibility for Additional Environmental Cleanup after Transfer of Real Property

The purpose of the attached policy is to describe the circumstances under which DoD would perform additional cleanup on DoD property that is transferred by deed to any person or entity outside the federal government. This policy is applicable to real property under DoD control that is to be transferred outside the federal government, and is effective immediately. For property that is transferred pursuant to section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 USC 9620(h)(3)(C)), this policy applies after the termination of the deferral period.

DoD continues to be committed to a remedy selection process that provides for full protection of human health and the environment, even after property has been transferred by DoD. The Deputy Under Secretary of Defense (Environmental Security) will issue separately any specific guidance needed to implement this policy. This policy should be read to be compatible with and does not supersede other related DoD policies, and is to be incorporated in the next revision of the appropriate DoD Instruction. I ask for your support in implementing this policy and working with communities so that they can make informed decisions in developing their redevelopment plans.

R. Noel Longuemare
Acting Under Secretary of Defense
(Acquisition and Technology)

Attachment



**DoD Policy on Responsibility for Additional Environmental Cleanup
After Transfer of Real Property**

Background. This policy is instituted within the framework established by land use planning practices and land use planning authorities possessed by communities, and the environmental restoration process established by statute and regulation. The land use planning and environmental restoration processes – two separate processes – are interdependent. Land use planners need to know the environmental condition of property in order to make plans for the future use of the land. Similarly, knowledge of land use plans is needed in order to ensure that environmental restoration efforts are focused on making the property available when needed by the community and that remedy selection is compatible with land use. This policy does not supplant either process, but seeks to integrate the two by emphasizing the need to integrate land use planning assumptions into the cleanup, and to notify the community of the finality of the cleanup decisions and limited circumstances under which DoD would be responsible for additional cleanup after transfer.

Cleanup Process. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 USC 9601 et seq.) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR 300) establish the requirements and procedures for the cleanup of sites that have been contaminated by releases of hazardous substances. CERCLA, furthermore, requires that a deed for federally owned property being transferred outside the government contain a covenant that all remedial action necessary to protect human health and the environment has been taken, and that the United States shall conduct any additional remedial action “found to be necessary” after transfer. Within the established restoration process, it is DoD’s responsibility, in conjunction with regulatory agencies, to select cleanup levels and remedies that are protective of human health and the environment. The environmental restoration process also calls for public participation, so that the decisions made by DoD and the regulatory agencies have the benefit of community input.

Land Use Assumptions in Cleanup Process. Under the NCP, future land use assumptions are developed and considered when performing the baseline risk assessment, developing remedial action alternatives, and selecting a remedy. The NCP permits other-than-residential land use assumptions to be considered when selecting cleanup levels and remedies, so long as selected remedies are protective of human health and the environment. The U.S. Environmental Protection Agency (EPA) further amplified the role of future land use assumptions in the remedy selection process in its May 25, 1995, “Land Use in the CERCLA Remedy Selection Process” directive (OSWER Directive No. 9355.7-04).

Development of Land Use Plans. By law, the local community has been given principal responsibility for reuse planning for surplus DoD property being made available at Base Realignment and Closure (BRAC) installations. That reuse planning and implementation authority is vested in the Local Redevelopment Authority (LRA) described in the DoD Base Reuse Implementation Manual (DoD 4165.66-M). The DoD Base Reuse Implementation Manual calls for the LRA to develop the community redevelopment plan to reflect the long term needs of the community. A part of the redevelopment plan is a “land use plan” that identifies the proposed land use for given portions of the surplus DoD property. The DoD is committed to working with local land use planning authorities, local government officials, and the public to develop realistic assumptions concerning the future use of property that will be transferred by DoD. The DoD will act on the expectation that the community land use plan developed by the LRA reflects the long-range regional needs of the community.

Use of Land Use Assumptions in the Cleanup Process. DoD environmental restoration efforts for properties that are to be transferred out of federal control will attempt, to the extent reasonably practicable, to facilitate the land use and redevelopment needs stated by the community in plans approved prior to the remedy selection decision. For BRAC properties, the LRA's redevelopment plan, specifically the land use plan, typically will be the basis for the land use assumptions DoD will consider during the remedy selection process. For non-BRAC property transfers, DoD environmental restoration efforts will be similarly guided by community input on land use, as provided by the local government land use planning agency. In the unlikely event that no community land use plan is available at the time a remedy selection decision requiring a land use assumption must be made, DoD will consider a range of reasonably likely future land uses in the remedy selection process. The existing land use, the current zoning classification (if zoned by a local government), unique property attributes, and the current land use of the surrounding area all may serve as useful indicators in determining likely future land uses. These likely future land uses then may be used for remedy selection decisions which will be made by DoD (in conjunction with regulatory agencies) in accordance with CERCLA and the NCP.

DoD's expectation is that the community at-large, and in particular the land use planning agency, will take the environmental condition of the property, planned remedial activities, and technology and resource constraints into consideration in developing their reuse plan. The February 1996 "Guide to Assessing Reuse and Remedy Alternatives at Closing Military Installations" provides a useful tool for considering various possible land uses and remedy alternatives, so that cost and time implications for both processes can be examined and integrated. Obviously, early development of community consensus and publication of the land use plan by the LRA or the land planning agency will provide the stability and focus for DoD cleanup efforts.

Applicable guidelines in EPA's May 25, 1995, "Land Use in the CERCLA Remedy Selection Process" Directive should be used in developing cleanup decisions using land use assumptions. For a remedy that will require restrictions on future use of the land, the proposed plan and record of decision (ROD) or other decision documents must identify the future land use assumption that was used to develop the remedy, specific land use restrictions necessitated by the selected remedy, and possible mechanisms for implementing and enforcing those use restrictions. Examples of implementation and enforcement mechanisms include deed restrictions, easements, inspection or monitoring, and zoning. The community and local government should be involved throughout the development of those implementation and enforcement mechanisms. Those mechanisms must also be valid within the jurisdiction where the property is located.

Enforcement of Land Use Restrictions. The DoD Component disposal agent will ensure that transfer documents for real property being transferred out of federal control reflect the use restrictions and enforcement mechanisms specified in the remedy decision document. The transfer document should also include a description of the assumed land use used in developing the remedy and the remedy decision. This information required in the transfer documents should be provided in the environmental Finding Of Suitability to Transfer (FOST) prepared for the transfer. The DoD Component disposal agent will also ensure that appropriate institutional controls and other implementation and enforcement mechanisms, appropriate to the jurisdiction where the property is located, are either in-place prior to the transfer or will be put in place by the transferee as a condition of the transfer. If it becomes evident to the DoD Component that a deed restriction or other institutional control is not being followed, the DoD Component will attempt to ensure that appropriate actions are taken to enforce the deed restriction.

The DoD expects the transferee and subsequent owners to abide by restrictions stated in the transfer documents. The DoD will reserve the right to enforce deed restrictions and other institutional controls, and the disposal agent will ensure that such language is also included in the transfer documents. If DoD becomes aware of action or inaction by any future owner that will cause or threaten to cause a

Policy on Responsibility for Additional Environmental Cleanup

release or cause the remedy not to perform effectively, DoD also reserves the right to perform such additional cleanup necessary to protect human health and the environment and then to recover costs of such cleanup from that owner under the terms of the transfer document or other authority.

Circumstances Under Which DoD Would Return to do Additional Cleanup. A determination may be made in the future that the selected remedy is no longer protective of human health and the environment because the remedy failed to perform as expected, or because an institutional control has proven to be ineffective, or because there has been a subsequent discovery of additional contamination attributable to DoD activities. This determination may be made by DoD as a part of the remedy review process, or could be a regulatory determination that the remedy has failed to meet remediation objectives. In these situations, the responsible DoD Component disposing of the surplus property will, consistent with CERCLA Section 120(h), perform such additional cleanup as is both necessary to remedy the problem and consistent with the future land use assumptions used to determine the original remedy. Additionally, after the transfer of property from DoD, applicable regulatory requirements may be revised to reflect new scientific or health data and the remedy put in place by DoD may be determined to be no longer protective of human health and the environment. In that circumstance, DoD will likewise, consistent with CERCLA Section 120(h), return to perform such additional cleanup as would be generally required by regulatory agencies of any responsible party in a similar situation. Also note that DoD has the right to seek cost recovery or contribution from other parties for additional cleanup required for contamination determined not to have resulted from DoD operations.

Circumstance Under Which DoD Would Not Return to do Additional Cleanup. Where additional remedial action is required only to facilitate a use prohibited by deed restriction or other appropriate institutional control, DoD will neither perform nor pay for such additional remedial action. It is DoD's position that such additional remedial action is not "necessary" within the meaning of CERCLA Section 120(h)(3). Moreover, DoD's obligation to indemnify transferees of closing base property under Section 330 (of the Fiscal Year 1993 Defense Authorization Act) would not be applicable to any claim arising from any use of the property prohibited by an enforceable deed restriction or other appropriate institutional control.

Changes to Land Use Restrictions after Transfer. Deed restrictions or other institutional controls put in place to ensure the protectiveness of the remedy may need to be revised if a remedy has performed as expected and cleanup objectives have been met. For example, the specified groundwater cleanup levels have been reached after a period of time. In such a case, the DoD Component disposing of the surplus property will initiate action to revise the deed restrictions or other institutional controls, as appropriate.

DoD will also work cooperatively with any transferee of property that is interested in revising or removing deed restrictions in order to facilitate a broader range of land uses. Before DoD could support revision or removal, however, the transferee would need to demonstrate to DoD and the regulators, through additional study and/or remedial action undertaken and paid for by the transferee, that a broader range of land uses may be undertaken consistent with the continued protection of human health and the environment. The DoD Component, if appropriate, may require the transferee to provide a performance bond or other type of financial surety for ensuring the performance of the additional remedial action. The transferee will need to apply to the DoD Component disposal agent for revision or removal of deed restrictions or other institutional controls. Effective immediately, the process for requesting the removal of such restrictions by a transferee should be specified by the disposal agent in the documents transferring property from DoD.

Making those revisions or changes will be considered by DoD to be an amendment of the remedy decision document. Such an amendment will follow the NCP process and require the participation by DoD and regulatory agencies, as well as appropriate public input.

Disclosure by DoD on Using Future Land Use in Remedy Selection. A very important part of this policy is that the community be informed of DoD's intent to consider land use expectations in the remedy selection process. At a minimum, disclosure shall be made to the Restoration Advisory Board (or other similar community group), the LRA (if BRAC) or other local land use planning authority, and regulatory agencies. The disclosure to the community for a specific site shall clearly communicate the basis for the decision to consider land use, any institutional controls to be relied upon, and the finality of the remedy selection decision, including this policy. In addition, any public notification ordinarily made as part of the environmental restoration process shall include a full disclosure of the assumed land use used in developing the remedy selected.

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